

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.21439 OF 2006

DATED: -03-2007

Between :

Smt. T. Prabhavati ... Petitioner

And

1. The Commissioner of Prohibition & Excise,
Government of Andhra Pradesh at Hyderabad.,
And others. ... Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.21439 OF 2006

ORDER :

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The petitioner herein was granted a licence in Form A-4 under the provisions of the Andhra Pradesh Excise (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2005 (for short, 'the Rules') for the period 2006-08 for the sale of Indian-made Foreign Liquor in respect of Shop in Municipal Election Ward No.20 of Dharmavaram Municipality which was notified at Sl.No.64 in the Auction Notice, dated 27-5-2006. It is not in dispute that in the auction conducted by the 3rd respondent pursuant to the tender notice dated 27-5-2006 some of the shops notified could not be concluded for various reasons. The said shops included Shop No.4 of Battalapally Village, Dharmavaram Mandal notified at Sl.No.173 in the Auction Notice dated 27-5-2006. While so, the District Collector, Ananthapur issued a fresh Auction Notice dated 6-9-2006 proposing to conduct auction. Aggrieved by the said action of the respondents in proposing to shift/relocate the shop notified at Battalapally Village, Dharmavaram Mandal to Ward No.22 of Dharmavaram Municipality the petitioner along with another licensee filed W.P.No.18816 of 2006. This Court while directing Rule Nisi by order dated 11-9-2006 granted interim stay of auction under the Notification dated 6-9-2006. While so, the 3rd respondent issued a fresh re-notification dated 25-9-2006 proposing to conduct auction on 3-10-2006 in respect of the very same shop notified at Gazette Sl.No.173 by relocating/shifting the same to the Election Ward No.21 of Dharmavaram Municipality. Pursuant thereto, the auction was conducted on 3-10-2006 and the 4th respondent was declared as the successful bidder who was also granted licence in Form A-4. Hence, this writ petition seeking a declaration that the action of the respondents 1 to 3 in changing the location of the shop shown at Sl.No.173 from Battalapally Village Shop No.4 of Election Ward No.21 of Dharmavaram Municipality in the re-notification dated 25-9-2006

and granting lease in favour of the 4th respondent as arbitrary and illegal apart from being contrary to the order passed by this Court pending W.P.No.18816 of 2006.

The contention of the petitioners is that since the location of shops were fixed by the Commissioner of Prohibition & Excise before publication of the Auction Notice dated 27-5-2006 under Rule 5 of the Rules, the respondents have no power to shift/relocate the said shops to a different area for the purpose of the fresh auction proposed to be conducted under the Notification dated 25-9-2006. It is contended that in exercise of the powers conferred under Rule 4 of the Rules the Commissioner of Excise had issued a Circular dated 25-6-2006 fixing the number of shops and the location of the same on the basis of which the District Collector-cum-Auctioning Authority issued the Auction Notice dated 27-5-2006. The number and location of the shops so fixed by the Commissioner of Prohibition & Excise cannot be altered on any ground whatsoever in the absence of any provision under the A.P. Excise Act or the Rules made thereunder empowering the respondents to do so.

Though no counter-affidavit has been filed by the respondents 1 to 3 in the present writ petition in the counter-affidavit filed in similar writ petitions it was explained that having regard to the fact that some of the shops notified in the Auction Notice dated 27-5-2006 remained undisposed in various Districts, the Commissioner of Prohibition & Excise vide proceedings dated 27-6-2006 issued instructions to issue notifications for re-tendering the left over shops. The Commissioner of Prohibition & Excise had also relocated the shops after ascertaining the reports from the concerned Station House Officer and Assistant Prohibition & Excise Superintendent and pursuant thereto new areas were notified under the fresh Auction Notice dated 31-7-2006. The said shops were accordingly finalized and the successful bidders were granted licences in Form A-4. It is also contended that shifting of area/relocation of the shops to new areas has not affected

the business of the petitioners or any other licensee and at any rate since the petitioners cannot claim any fundamental right in the matter of trading in liquor which is exclusively a matter of privilege granted by the Government the writ petitions are misconceived and liable to be dismissed.

In the counter-affidavit filed by the 4th respondent, it is stated that she is a bona fide licensee who had spent more than Rs.20 lakhs towards licence fee and establishment of shop, furniture and etc. It is also stated that the 1st respondent in exercise of inherent powers vested in him fixed the shop at Ward No.21 and there is no bar either under the Act or under the Rules to renotify a shop in another ward. It is contended that the petitioner who has no vested right has no locus standi to question granting of licence by the competent authority on the ground that her licence would be affected on account of proximity of new shop.

I have heard the learned Counsel for both the parties in detail.

For proper appreciation of the rival contentions raised by the learned Counsel for the parties, it is necessary to note the relevant statutory provisions governing the grant of lease of right to sell Indian Liquor and Foreign Liquor.

In exercise of the powers conferred by Section 72 read with Sections 17, 28 and 29 of the A.P. Excise Act, 1968, and Ordinance 5 of 2005, the Governor of Andhra Pradesh made the Rules called the A.P. Excise (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2005 (for short, 'the Rules'). The said Rules issued under G.O.Rt.No.998, Revenue (Ex.II) Department, dated 24-5-2005, are made applicable for the grant of privilege by shop, conditions governing thereof and transport of Indian Liquor and Foreign Liquor by the leaseholder. Rules 3, 4 and 5 of the said Rules which provide for grant of lease of right to sell Indian Liquor and Foreign Liquor and for establishment of shops run as under :

“3. Lease of Right to sell Indian Liquor and Foreign

Liquor :

Subject to the provisions of these rules the grant of lease of right to sell Indian Liquor and Foreign Liquor by shop shall ordinarily be granted by inviting sealed tenders from the public after due notification. The lease shall be for a period of one year or part thereof.

Provided that where the Commissioner considers it expedient to grant the lease of right to sell Indian Liquor and Foreign Liquor by shop in any other manner, he shall for the reasons to be recorded in writing, do so.

4. Establishment of Shops:-

The Commissioner of Proh. & Excise having due regard to requirement, public order, health, safety and other factors as thinks fit, may fix the number of shops to be established in an area/locality before the publication of the Auction Notice under Rule 5.

5. Auction Notice :

(1) Where it is proposed to grant the lease for sale of Indian Liquor and Foreign Liquor by shop a notice of the proposed auction containing the particulars mentioned in sub-rule (2) shall be published, at least (7) seven days in advance of the date of auction, by the Collector of the District in the District Gazette or in such other manner as the Collector may deem fit.

(2) The auction notice shall contain the following particulars :

- (i) Serial Number and the name of the area / locality where the shop will be established.*
- (ii) The last date, time and place for receipt of tenders;*
- (iii) The place of auction with time and date;*
- (iv) The conditions governing the auction;*
- (v) The lease period and*
- (vi) Any other matter which may be considered necessary by the auctioning authority.”*

A combined reading of the above Rules makes it clear that the lease of right to sell Indian Liquor and Foreign Liquor by shop shall ordinarily be granted by inviting sealed tenders from the public. Before issuing such auction notice, the Commissioner of Prohibition & Excise has to fix the number of shops to be established in an

area/locality. It is also relevant to note that Rule 5 of the Rules specifies the particulars to be mentioned in the auction notice which include the name of the area/locality where the shop will be established.

In the case on hand, it is not in dispute that the Commissioner of Prohibition & Excise, A.P., Hyderabad having considered the requirement of the localities and other relevant factors issued the Circular dated 25-5-2006 fixing the number of shops to be established. On the basis of the said proceedings, the concerned District Collector issued the auction notices dated 27-5-2006 inviting sealed tenders from the public for grant of leases by shop in the areas identified by the Commissioner in Khammam District. Pursuant thereto, leases were granted to the successful bidders in respect of many areas including the writ petitioners. However, for various reasons, the shops identified in some of the areas could not be remained undisposed and the same were proposed to be auctioned under the impugned notifications by relocating the shops to different areas. The question is whether such relocation/shifting is permissible under law.

At the outset, it is to be noted that Rule 21 of the Rules which provides for such a situation runs as under :

“21. Sale by outlets of A.P.B.C.L. and the Distillery/Brewery Licenceholders:- (1) The auctioning authority with the approval of the Commissioner of Prohibition & Excise may permit the A.P.B.C.L. or a holder of a Distillery/Brewery licence under the Act to open outlets for the sale of IL & FL in such areas/localities where the privilege of sale by shop could not be disposed off in the auction or when a lease already granted is cancelled and the same could not be re-auctioned for any reason.

(2) The Commissioner of Prohibition and Excise may permit the A.P.B.C.L. to open outlets for the sale of IL & FL anywhere in the State whenever he deems necessary in public interest.”

On a plain reading of the above provision, it is clear that in case the privilege of sale by shop is not disposed off in the auction for any reason, the auctioning authority with the approval of the Commissioner of Prohibition & Excise has to permit the A.P.B.C.L. or the Distillery/Brewery Licenceholder under the Act to open outlets for sale of IL & FL in such areas.

In certain circumstances, re-auction of the right of sale in the areas/localities already identified by the Commissioner of Prohibition & Excise is also permissible as provided under Rule 20. However, there is absolutely no provision under the Rules empowering either the auctioning authority or the Commissioner of Prohibition & Excise to relocate the shop identified under Rule 4 to another locality/area for the purpose of conducting fresh auction on any ground whatsoever.

Even Sub-rule (3) of Rule 29 of the Rules which provides for shifting of the licensed premises i.e., after granting the lease to the successful bidder cannot be made applicable to relocation of the shop originally notified in a particular area. Hence, the mere fact that the Commissioner of Prohibition & Excise had issued a circular dated 25-6-2006 relocating the undisposed off shops does not validate the impugned auction notifications since such relocation cannot be traced to the power conferred under Rule 4 or any other provision.

In identical circumstances, W.P.No.215 of 2007 has been allowed by this Court by order dated 1-3-2007 thereby declaring the licences granted pursuant to the fresh auctions after relocating the shops as arbitrary and illegal.

For the aforesaid reasons, the Writ Petition is allowed as prayed for. No costs.

G. ROHINI, J.

Dt. -3-2007

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